STATE OF MICHIGAN 84TH DISTRICT COURT

WEXFORD COUNTY

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DAVID A. HOGG
DISTRICT JUDGE

AUDREY D. VAN ALST
ATTORNEY MAGISTRATE



October 5, 2011

Mr. Corbin R. Davis
Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

Re: Administrative File No. 2010-20

Dear Mr. Davis:

The Court should change the procedure that appears to allow a person to plead guilty or no contest without being advised of how a prior felony conviction may affect his or her maximum sentence. The problem stems from MCL 769.13(3), which permits the prosecutor to file notice of intent to seek an enhanced sentence for an habitual offender *after* the plea is taken. Unfortunately, I believe the proposed change to MCR 6.302 would be both inefficient and ineffective. Worse yet, its implementation may cause habitual offenders in many cases to get less information about sentence enhancement than they would now receive under our current practice.

The proposed rule change would be inefficient because it would add one more admonition to the plea-taking dialog, whether the circumstances require it or not. This information is not needed by the majority of defendants who enter pleas and are not subject to habitual criminal treatment. By adding such verbiage to every guilty plea we increase the possibility of judicial error and waste time. Also, by giving warnings that are inapplicable to most defendants we deemphasize information that does matter to them.

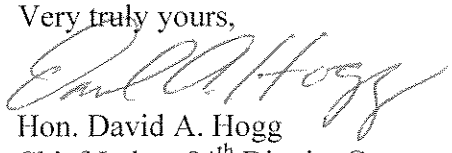
The proposed rule change would be ineffective because the required warning does not convey enough information to the habitual offender to allow a knowing and intelligent waiver of a constitutional right. Do the words "your maximum possible sentence may be increased" pass muster of due process when a five year maximum sentence for larceny leap-frogs to life in prison? Do we really believe that every defendant needs to know the maximum sentence before pleading guilty, except when the prosecutor files a court document too late for the judge to tell him about it?

The proposed rule change would encourage judges to adopt a rote plea-taking script that would substitute an almost meaningless generality for important specific information that is now generally provided. Judges usually have the habitual notice in hand when the plea is taken, and precisely advise the defendant of the maximum sentence derived by application of the habitual offender act. This should be the standard, and I believe that MCR 6.302(B)(2) should be amended, if necessary, to require it.

In my experience, habitual supplements filed after conviction are quite rare, and I believe the resulting complications should be treated as exceptions to general procedure. I'm not sure why it is necessary to permit notices of sentence enhancement to be filed after conviction. But if it is, MCR 6.310(B)(2) should be amended to allow the defendant to withdraw the plea before sentence on this basis.

I thank the Court for considering these comments.

Very truly yours,



Hon. David A. Hogg
Chief Judge, 84th District Court